

VIRGINIA M. JOHNSTON

IBLA 81-914

Decided September 10, 1981

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 52335 and CA MC 52336.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: Dennis Stack, Esq., Pomona, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Virginia M. Johnston appeals a decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented McDarment #1 and #2 Limestone lode mining claims, CA MC 52335 and CA MC 52336, abandoned and void because evidence of assessment work or notice of intent to hold the claims had not been filed with BLM on or before December 30, 1980, as required by 43 CFR 3833.2-1.

Proof of labor for the two claims was recorded in Tulare County, California, December 29, 1980, and was received by BLM January 19, 1981.

In her statement of reasons for the appeal, appellant states that she owns a one-third interest in each of the claims, but did not receive any notice to file the proof of labor. She concedes the proof of labor was filed 19 days late.

Section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim on public land shall file an affidavit of assessment work performed on or for the claim, or a notice of intention to hold the claim, on or before December 30 of each year, in the proper BLM office. The section further provides that failure to file the required instruments timely shall be conclusively deemed to constitute an abandonment of the unpatented mining claim. The statutory requirements are replicated in 43 CFR 3833.2-1 and 3833.4. Neither the statute nor the regulations provide for notice followed by a grace period in which to file.

[1] As the required documents were not filed with BLM on or before December 30, 1980, the claims were properly deemed to be abandoned and void. Susan Mativo, 52 IBLA 134 (1981). This Board has no authority to waive a failure to comply with statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Appellant may wish to confer with BLM about the possibility of relocating the claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

